MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Coyote Creek Trail Master Plan

PROJECT FILE NUMBER: PP09-218

PROJECT DESCRIPTION: Construction of a 4.1-mile segment of the planned trail including five pedestrian bridges (including four over Coyote Creek and one over Penitencia Creek), 10 under crossings (beneath roadways, a railroad trestle, I-880 and U.S. 101), connections to existing and planned trails, gateway features at access points, and other trail amenities.

PROJECT LOCATION & ASSESSORS PARCEL NO.: Adjacent to Coyote Creek, from Montague Expressway to Watson Park

COUNCIL DISTRICT: 3 and 4

APPLICANT CONTACT INFORMATION: City of San José, Department of Public Works: City Facilities Architectural Services Division, 200 East Santa Clara Street, Tower, 6th Floor, San José, CA 95113; contact: Jan Palajac, Project Manager, Tel: (408) 535-8408

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

II. **AGRICULTURE AND FOREST RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY – The project will not have a significant impact on this resource, therefore no mitigation is required.

IV. BIOLOGICAL RESOURCES – The project would result in a significant impact to biological resources. Implementation of the following mitigation measures will reduce project biological resource impacts to a less than significant level.

A. The project would result in a significant impact to riparian habitat due to the removal of trees. Riparian trees to be retained may also be impacted during construction. Implementation of the following mitigation measures will reduce impacts to riparian habitat to a less than significant level. All of the trees to be removed will be replaced at the following ratios.

Table 6
Tree Replacement Ratios

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Non-Native Invasive	
18 inches or greater	5:1	2:1	0.5:1	24-inch box
12 - 17 inches	3:1	2:1	0.5:1	24-inch box
6 – 11 inches	2:1	1:1	0.5:1	15-gallon container
less than 6 inches	1:1	0.5:1	0:1	15-gallon container

Notes:
X:X = tree replacement to tree loss ratio

Based on the size and species of the trees to be removed, 194 replacement trees would be required to mitigate project impacts to riparian trees. The required tree plantings could be accomplished on approximately 1.3 acres within one or more mitigation areas.[1] An additional 0.16 acres of riparian habitat will be provided to mitigate for the removal of the existing 0.05-acre mitigation site. Therefore, the project will restore at least 1.46 acres of native-dominated riparian habitat along the project alignment. Trees planted within the riparian corridor of Coyote Creek must be native species, appropriate for the Coyote Creek riparian habitat.

B. A Riparian Mitigation and Monitoring Plan shall be completed for the project by a restoration ecologist during the regulatory permitting phase. The plan shall be submitted to the Director of Planning, Building, and Code Enforcement. The plan will identify the preferred mitigation site and shall include:

[1] This surface area includes mitigation for impacts resulting from the replacement of the Penitencia Creek culvert/crossing with a free-span pedestrian bridge. If the final project design does not include this option, then the riparian mitigation requirement can be reduced by 1,100 square feet.

1. Mitigation design (including existing and proposed site hydrology, soil preparation methods, planting plan, and irrigation and maintenance plan).
2. Monitoring plan covering a 10-year period (including performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, and remedial measures/adaptive management).
3. Contingency plan for mitigation elements that do not meet performance or final success criteria.

C. Construction of the project could result in significant construction-related impacts to salmonids. Implementation of the following mitigation and avoidance measures will reduce impacts to water quality and salmonids during construction to a less than significant level. The following measure will be implemented during construction activities that involve the use of pile drivers to reduce adverse effects on salmonids:

1. Conservation measures described in the technical guidance for reducing impacts to salmonids from pile driving detailed by Caltrans (2009) shall be followed where practicable. Such measures will include, but are not limited to:

   a. Limit pile-driving work to the period June 15th to October 15th as described above, or even a narrower window within this period if so advised by NMFS or CDFG fisheries biologists.
   b. Avoid in-water installation of piles (which is not proposed by the project).
   c. Use low-impact pile-driving equipment such as vibratory hammers that minimize underwater sound pressure levels or press-in pile installation to the greatest extent practicable.
   d. Avoid using steel piles to the greatest extent practicable.
   e. Limit construction-related underwater sound exposure levels to less than 187 dB and sound pressure levels to less than 208 dB.
   f. If feasible, generate lower intensity underwater sounds to repel fish from the immediate construction area prior to use of a high-pressure hammer.

D. The following measures will be implemented during any culvert removal or restoration activities within Penitencia Creek to reduce adverse effects on salmonids:

1. If culvert removal or other activities in a flowing stream are unavoidable, the work area will be dewatered (e.g., using coffer dams), and any stream flow shall be diverted around the work area by a barrier, temporary culvert, or a new channel capable of permitting upstream and downstream fish movement.

2. Construction of the barrier or the new channel shall normally begin in the downstream area and continue in an upstream direction.

3. If a segment of Penitencia Creek must be dewatered or diverted, such work will occur during the dry season (roughly June 15th to October 15th, with the potential for extensions beyond this period, in consultation with NMFS, if dry weather permits). Additionally, a qualified biologist will be present during the construction of the coffer dams and dewatering of the area within the coffer dams to ensure that no salmonids,

western pond turtles, or other native wildlife are directly impacted during installation of the coffer dams, and to thoroughly inspect and seine (i.e. utilize a net to capture aquatic species) the area within the coffer dams before the work area is pumped out. Any native fish, reptiles, or amphibians within the work area will be removed to the area immediately downstream. No steelhead will be moved without authorization of NMFS.

4. A construction personnel education program will be given by a qualified biologist before the commencement of construction to explain to construction personnel how best to avoid the accidental take of steelhead and salmon. The approved biologist will conduct a training session that will be scheduled as a mandatory informational field meeting for contractors and all construction personnel. The field meeting will include topics on species identification, required practices before the start of construction and a discussion of general measures that are being implemented to conserve the species as they relate to the project, penalties for noncompliance, and boundaries of the construction area.

E. The project could result in a significant impact to bat populations, if roosts and/or colonies are identified within the Biological Study Area (BSA). Implementation of the following avoidance measures will be implemented to reduce impacts to bats that could result from project construction:

1. Habitat Assessment and Initial Survey: Prior to construction (but far enough in advance of construction to allow for adequate planning of avoidance and minimization efforts without delaying construction), a trained bat biologist will complete a habitat assessment throughout the BSA to identify potential maternity roost sites or substantial day roost sites.

   If potential roost habitat is identified within the BSA, then prior to construction (but far enough in advance of construction to allow for adequate planning of avoidance and minimization efforts without delaying construction), a bat biologist will complete acoustical monitoring surveys using an "Anabat" or comparable device and visual surveys at dusk to identify roost locations and types, the species composition, and number of occupants. If acoustical monitoring and visual survey results suggest that bats are roosting in trees near the BSA, multiple observations may be required to locate the roosts in order to determine if the roost will be impacted.

2. Pre-construction Survey: Because the habitat assessments and initial surveys may be completed for planning purposes well in advance of construction, several months or longer may pass between that survey and the initiation of construction in a given area. Therefore, a second pre-construction survey for roosting bats, following the methods described above, will be completed by a qualified biologist within 15 days prior to any construction activities or tree removal in a given area, to determine whether bats have occupied a roost in or near the project's impact areas. This survey should be facilitated considerably by information (e.g., on potential roost trees) gathered during the previous survey.

3. Buffer: If a maternity roost of any bat species is present, the bat biologist will determine the extent of a construction-free buffer around the active roost that will be maintained. This buffer would be maintained from April 1st until the young are flying, typically after August 31st.

4. Roost Evaluation: If a bat roost is present in a bridge or tree in or adjacent to the project's construction areas, a qualified bat biologist will determine the likelihood that the roost will be affected by project activities. The impacts of roost eviction relative to the potential construction disturbance will be evaluated and the bats will be evicted only if the qualified bat biologist determines it is necessary.

5. Roost Eviction: If it is determined that a bat roost will be directly disturbed or removed, the bats will be evicted from the colony site prior to construction. Eviction of bats will occur at night, so that bats will have less potential for predation compared to daytime roost abandonment. Eviction will occur between September 1st and March 31st, outside the maternity season, unless the roost in question is known (e.g., as a result of mist-netting) to be a non-maternity roost occupied only by males. Eviction will not occur during long periods of inclement or cold weather (as determined by the bat biologist) when prey are not available or bats are in torpor (i.e. temporary hibernation- a state of decreased physiological activity).

   If bats roosting within a bridge need to be evicted, one-way doors will be inserted into the crevices to allow bats to exit, but not re-enter, the crevices. These one-way doors will be inspected regularly until demolition commences, and will be removed the morning of demolition. If feasible, one-way doors will also be used to evict bats from tree roosts. If use of a one-way door is not feasible, or the exact location of the roost entrance in a tree is not known, the trees with roosts that need to be removed should first be disturbed by removal of some of the trees' limbs not containing the bats. Such disturbance will occur at dusk to allow bats to escape during the darker hours. These trees would then be removed the following day. All of these activities will be performed under the supervision of the bat biologist.

6. Reporting: A report outlining the results of pre-construction surveys and any recommended buffer zones, roost evictions, or other avoidance measures shall be submitted to the satisfaction of the City's Environmental Principal Planner, prior to project construction.

F. If it is determined that the project would result in the direct loss of a bat roost and this loss would result in a decline in regional populations of a given species due to the absence of alternative roost sites in nearby areas that could be used by that species, the proposed project will implement the following mitigation measures to reduce impacts to bats to a less than significant level.

1. The results of the visual and acoustic surveys described above will be analyzed to determine the presence, number, and identity of bats roosting in areas that will be disturbed by the proposed project. If 20 or more individuals of the Yuma bat, or 100 or more individuals of Mexican free-tailed bat or another bat species, will be

displaced by the project as a result of removal of a roost tree, then a qualified bat biologist will determine whether alternative roost sites are present in the project vicinity, taking into account the number of individuals of each bat species that will be impacted, and the type of roost (e.g., day or night, maternity or bachelor) impacted. If in the opinion of the bat biologist, insufficient alternative roost sites are present, then roosting habitat will be provided in the form of a structure (e.g., either a structure attached to a bridge in the project vicinity or bat houses placed near such bridge) designed by a qualified bat biologist to provide suitable roosting habitat for the displaced species.

G. The project does not propose permanent alterations of any existing bridges in the project area aside from the installation of safety lighting under the bridges. As a result, if any bats require eviction from bridges to avoid disturbance of a maternity roost during construction, the devices used to evict the bats will be removed following completion of construction and the bats would again be able to use the bridge as a roost site.

H. Following project construction, any bridge maternity roost supporting more than 20 Yuma bats or more than 100 individuals of another bat species will be monitored for occupancy for a period of two (2) years. If the roost is occupied by the species present prior to construction, no additional mitigation will be required. If the species present prior to construction does not reoccupy the roost within two (2) years, then alternative roosting habitat will be provided as described above. Alternatively, the alternative roosting habitat can be provided in lieu of monitoring.

V. **CULTURAL RESOURCES** –Grading and excavation during construction of the proposed project on the San José Flea Market property could result in the exposure or destruction of subsurface prehistoric archaeological resources. The following mitigation measures are included in the proposed trail project to reduce impacts to prehistoric and historic archaeological resources on the Flea Market property to a less than significant level.

A. Mechanical subsurface presence/absence testing will be completed for the project alignment on the Flea Market property. Testing will consist of backhoe testing for suspected prehistoric deposits, combined with selected stripping of soils to search for the smaller, more discrete historic deposits which may exist near the former farm residences known to have existed on the site. Where possible, stripping would be confined to the immediate environment of the former building sites.

B. In the event that any actual prehistoric and/or historic archaeological deposits are discovered during presence/absence testing, a program for evaluation of the deposits through hand excavation of the suspected resource shall be submitted to the Director of Planning, Building, and Code Enforcement for approval. If evaluation demonstrates that the resource is eligible for inclusion on the California Register of Historic Resources, a plan for mitigation of impacts shall be submitted to the Director of Planning, Building, and Code Enforcement for approval.

C. If feasible, mitigation will take the form of avoidance of impacts to the resource through project redesign, such as realigning the trail within the 100-foot open space easement.[2] In those cases where avoidance is not possible, mitigation can take the form of additional hand excavation to retrieve a representative sample of the archaeological resource for analysis.

D. Any human remains encountered shall be handled in accordance with State law and any applicable Native American agreements. All human remains and burial-associated artifacts shall be repatriated in a location that will not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed, and a report summarizing such work shall be prepared and provided to the City's Director of Planning, Building, & Code Enforcement.

VI. ENERGY - The project will not have a significant impact on this resource, therefore no mitigation is required.

VII. GEOLOGY AND SOILS – The project will not have a significant impact on this resource, therefore no mitigation is required.

VIII. GREENHOUSE GAS EMISSIONS– The project will not have a significant impact on this resource, therefore no mitigation is required.

IX. HAZARDS AND HAZARDOUS MATERIALS – The proposed project could create a significant hazard to construction workers and/or to the public as a result of trail construction on potentially contaminated soil. The project proposes to implement the following measures to reduce hazardous materials impacts during project construction to a less than significant level.

A. Further evaluation of soil quality along the proposed trail alignment on the Fox property and at the proposed undercrossings beneath US 101, I-880, Berryessa Road, Oakland Road, and the UPRR trestle will be completed prior to construction.

1. If further evaluation indicates the presence of impacted soil, a remediation program for on-site soil removal shall be prepared to the satisfaction of the Director of Planning, Building and Code Enforcement, the Environmental Services Department (ESD), and RWQCB.

2. If it is determined that excess soil will be generated at other locations along the proposed trail alignment, it is recommended that soil sampling and laboratory analyses be performed to: 1) evaluate residual pesticide concentrations, if any; and 2) determine appropriate off-site disposal facilities licensed to accept the material. If further evaluation indicates the presence of impacted soil, a remediation program for on-site soil removal shall be prepared to the satisfaction of the appropriate regulatory agency (such as the DTSC, RWQCB, or Santa Clara County Environmental Health Department) and local agencies, including the Director of Planning, Building, and Code Enforcement and ESD.

[2] If realignment of the trail is considered to avoid impacts to cultural resources and additional or new environmental impacts could result from the project change, subsequent environmental review of the project may be required.

B. The City shall develop a site management plan (SMP) to establish management practices for handling materials/structures encountered during construction (i.e., wells, burn areas, debris, etc.) to avoid hazardous materials impacts to the public, environment, and construction workers.

C. If imported soil is used during project construction, the source and quality of the imported soil should be evaluated and documented. (Refer to the DTSC's October 2001 Clean Fill Advisory for guidance on evaluating imported fill.)

D. Prior to performing earthwork near these pipelines, the pipeline owners will be contacted to evaluate pipeline depths and establish appropriate safety measures.

X. HYDROLOGY AND WATER QUALITY – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XII. MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIII. NOISE – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIV. POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XV. PUBLIC SERVICES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVI. RECREATION – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. TRANSPORTATION / TRAFFIC – The interim on-street trail alignment would expose trail users to hazards associated with the at-grade UPRR crossing on Brokaw Road. The following mitigation measure will be implemented to reduce impacts associated with the railroad crossing to a less than significant level.

A. An engineering study will be completed to determine which, if any, additional safety devices should be provided at the UPRR crossing. The recommendations could include those found in the *Compilation of Pedestrian Safety Devices in Use at Grade Crossings* prepared by the FRA and/or the *Railroad-Highway Grade Crossing Handbook* prepared by the FHWA.

XVIII. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIX. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **June 6, 2011,** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or

2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulation period, from May 6, 2011 to June 6, 2011

John Davidson
Deputy

Revised 6-4-10 jam